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IN THE
COURT OF APPEALS OF INDIANA

KORY MCGLAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0704-CR-160
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0202-FA-589

October 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Kory McGlan appeals the revocation of his probation and imposition of an eighteen-month sentence. We affirm.

Issues

McGlan raises two issues, which we restate as:

I. whether there was sufficient evidence to revoke McGlan's probation; and,

II. whether the trial court abused its discretion when it sentenced McGlan to eighteen months following the probation revocation.

Facts

The State charged McGlan with Class A felony dealing in cocaine and Class A misdemeanor dealing marijuana on February 21, 2002. Nearly two years later on February 2, 2004, McGlan pled guilty to Class B felony dealing in cocaine, and the other charge was dismissed. McGlan was sentenced to ten years, with eight suspended and four years of formal probation.

Once on probation, McGlan was subject to weekly drug screens. On December 14, 2006, he was processed at the Marion County Drug Testing Laboratory between 6:00 and 6:30 p.m. An employee had called McGlan's name numerous times during that period, but he did not respond. McGlan re-appeared around 6:50 p.m. and was the final client at the lab that evening. He approached two female employees in the waiting area who were on their way out and said he "peed" himself. Tr. p. 6. One of the employees looked down at McGlan's pants and noticed that they were dry, but that his penis was

exposed. She enlisted a male coworker to handle the situation and left the area. McGlan had apparently urinated on the floor of the waiting area. He did not provide a sample that evening, claiming he could no longer urinate.

The State filed a notice of probation violation on December 20, 2006. The violations included McGlan exposing himself to a female employee and his refusal to submit to the drug screen on December 14, 2006. The trial court found that McGlan violated his probation and sentenced him to eighteen months. This appeal followed.

Analysis

I. Sufficiency of the Evidence

McGlan argues that the trial court erred in revoking his probation. Specifically, he contends that the State did not present sufficient evidence. An alleged violation of probation need only be proven by a preponderance of the evidence. T.W. v. State, 864 N.E.2d 361, 362 (Ind. Ct. App. 2007), trans. denied. We do not reweigh the evidence or reassess witness credibility. Id. Instead, we look to the evidence supporting the judgment and any reasonable inferences therefrom. Id. We will affirm if there is substantial evidence of probative value to support the revocation. Id. A violation of a single condition of probation is sufficient to revoke probation. Id.

Where the alleged probation violation is the commission of new crime, the State does not need to show that the probationer was convicted of the crime.[1] Whatley v. State,

[1] We acknowledge that McGlan was not charged with any crimes in connection with this incident; however, it should be noted that exposing oneself violates Indiana Code Section 35-45-4-1.5, a Class C misdemeanor for public nudity.

847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). Rather, a trial court only needs to find that probable cause exists to believe the probationer violated a criminal law. Id.

We find the evidence here was sufficient to support a revocation of probation. Namely, one witness testified to McGlan exposing himself in the waiting area of the lab. She stated that the zipper of pants was undone and his penis was partially exposed. On cross-examination the witness stated she was "positive" about what she saw and denied that it could have been a belt or shirt tail. Tr. p. 14. Her testimony also included the fact that the waiting area at the lab did contain a public restroom. The information that a restroom facility was merely within a few feet of the area contradicted McGlan's claims that he could not control his bladder and had no choice but to urinate in his pants. Also, an explicit term of McGlan's probation included that he submit to drug screens. He admittedly did not submit a sample on December 14, 2006, thereby violating this term. This evidence on both violations was sufficient to support the revocation of McGlan's probation.

II. Imposition of Sentence

McGlan also argues that the trial court abused its discretion by ordering him to serve eighteen months in the Department of Correction. We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). "A defendant may not collaterally attack a sentence on appeal from a probation revocation." Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). Serving a sentence in a probation program is not a right, but rather a "matter of grace" and a "conditional liberty that is a favor." Id.

As long as the proper procedures have been followed in conducting a probation revocation hearing pursuant to Indiana Code Section 35-38-2-3, the trial court may order execution of a suspended sentence upon a finding of any violation by a preponderance of the evidence. Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). Specifically, Indiana Code Section 35-38-2-3(g) provides:

> If the [trial] court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
>
> (1) continue the person on probation, with or without modifying or enlarging the conditions;
>
> (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
>
> (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Because we have found that the trial court properly revoked McGlan's probation for the violations, it was within the trial court's discretion to determine and impose a sanction under Indiana Code Section 35-38-2-3(g). See Abernathy, 852 N.E.2d at 1022. In doing so, the trial court ordered execution of only part of McGlan's suspended sentence. McGlan was facing eight years of a suspended sentence. He had only eighteen months of probation remaining. The State and the probation officer agreed and recommended that McGlan serve those eighteen months as executed time. The trial court did not abuse its discretion by ordering McGlan to serve only a small portion of his suspended sentence.

Conclusion

The trial court had sufficient evidence to revoke McGlan's probation and did not abuse its discretion in sentencing him to eighteen months. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.